

11 San Jose, California
Tuesday, March 18, 2025

13 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 10:47-11:30/12:12-12:42 = 1 HOUR AND 13 MINUTES

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1 Tuesday, March 18, 2025

10:47 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling Case 22-CV-03699-PCP, Forrest
5 versus Meta Platforms, Inc., on for discovery hearing.

6 If the parties could state their appearances, please,
7 beginning with Plaintiff, and if you could please speak into
8 the microphone and identify yourself. Thank you.

9 MR. QUINN: Yes. Good morning, your Honor. John
10 Quinn from Hecker Fink on behalf of Plaintiff, Doctor Andrew
11 Forrest.

12 THE COURT: Okay. Good morning.

13 Anyone else?

14 MR. JAIN: Yes. Amit Jain, also on behalf of
15 Doctor Andrew Forrest. Good morning.

16 THE COURT: Okay. Good morning.

17 MS. DELA PENA: Good morning. Joyce Dela Pena on
18 behalf of Doctor Andrew Forrest.

19 THE COURT: Good morning.

20 MR. HOWARD: Good morning, your Honor. Derek
21 Howard for Plaintiff.

22 THE COURT: Okay. Good morning.

23 MS. DEARBORN: Good morning, your Honor. Meredith
24 Dearborn of Paul Weiss for Defendant Meta. I'm joined by my
25 colleagues, Walt Brown, Paloma Rivera, and Kat Cooper.

1 THE COURT: Okay. Good morning.

2 MR. BROWN: Good morning, your Honor.

3 THE COURT: So this hearing is on two discovery
4 disputes, the matters at Dockets 186 and 187, and I
5 understand from looking at the docket that the parties
6 currently have a substantial completion for document
7 production deadline of March 31st. Is that still the case?

8 MS. DEARBORN: We actually have an agreement in
9 principle to extend that deadline by 60 days, your Honor.

10 THE COURT: Okay.

11 MS. DEARBORN: So we intend to get a stipulation
12 on file before the substantial completion deadline that
13 memorializes that agreement.

14 THE COURT: Okay. That's helpful to know. And
15 would that also -- does that stipulation also contemplate
16 moving the fact discovery deadline?

17 MS. DEARBORN: Yes, your Honor. It would move all
18 deadlines in phase one by 60 days, approximately.

19 THE COURT: Okay. All right. I did want to check
20 on that.

21 And I have, also, in preparation for this hearing, read
22 the order that Judge Pitts issued at Docket 121 granting, in
23 part, the motion to dismiss.

24 So I have in mind, I think, what is the context for
25 both of these disputes, and just by way of framing that

1 issue, and not that this is limiting your discovery, but the
2 fact question that Judge Pitts identified is whether Meta
3 materially contributed to the aspect of the content that is
4 allegedly illegal, and he noted in his order that
5 Plaintiff's allegations present a factual dispute regarding
6 whether Meta's ad systems were neutral tools that anyone
7 could use or misuse, or whether the tools themselves
8 contributed to the content of the ads, including to the
9 aspects of the content that are allegedly illegal.

10 So I understand that that's at least the framing in the
11 order on the motion to dismiss, and I found that helpful in
12 thinking about your disputes. I don't know if you do, but
13 that was very helpful.

14 I'd like to start with the scam ads dispute at Docket
15 186, and there was a little footnote that indicated that
16 maybe some documents had been produced, you know, on the eve
17 of submission of this letter, and Plaintiff had not yet
18 reviewed them. So can the Plaintiff just update the Court
19 on what is the status of this dispute? Has there been any
20 narrowing of the issues for resolution?

21 MR. QUINN: There has not been any narrowing of
22 the dispute, your Honor. There has been some production in
23 accordance with the sort of unilateral approach that Meta
24 declared and then began on. So, at present, to the best of
25 my information, they've produced 14 or 15 ads.

1 We've produced more to them than they've produced to
2 us, and otherwise have produced printouts of websites,
3 copies of websites, and some marketing materials that
4 reference certainly publicly branded and publicly described
5 tools. That's what we have.

6 THE COURT: Okay. And just so that I'm clear,
7 what document requests are at issue? I have, you know, the
8 attachments that list all of them, and it wasn't clear from
9 the Plaintiffs, as part of the submission, which document
10 requests you think are at issue.

11 MR. QUINN: So, if we -- if we're starting with
12 the first part of the motion the Court described, which I
13 think essentially deals with the question of how to find the
14 scam ads at issue, I'd say the most relevant request, I
15 believe, is request number one, which is simply "Produce the
16 scam ads. Produce the ads that misappropriated Doctor
17 Forrest's likeness, and the pitched cryptocurrency or
18 financial investment schemes."

19 So there are probably a number of requests that, in
20 different ways, are derivative of this effort to first go
21 find the ads at issue that are in Meta's possession, but
22 probably the most relevant document request would be the
23 first one.

24 THE COURT: Okay. And then sort of drilling down
25 further on that, and what the Plaintiff is seeking, the

1 Plaintiff is seeking all scam ads, meaning all ads that are
2 not, in fact, genuine advertisements by Doctor Forrest. Is
3 that right?

4 MR. QUINN: That is the request. We are certainly
5 open to, you know, a reasonable approach. I think the
6 concern we have --

7 THE COURT: I'm just trying to -- I'm focusing on
8 the "what."

9 MR. QUINN: Sure.

10 THE COURT: So I'm sorry I'm taking this a little
11 piecemeal, but the "what." So, in the first instance -- and
12 this is not the only thing you're asking for. You want to
13 discover all scam ads during the relevant period of time?

14 MR. QUINN: That's correct.

15 THE COURT: Okay.

16 MR. QUINN: That is the request.

17 THE COURT: And did Doctor Forrest actually engage
18 in genuine advertising for anything? Like, are there, like,
19 legitimate advertising using his name and likeness out
20 there, or is it the only content out there are, you know,
21 scam ads, things that are faked?

22 MR. QUINN: The latter.

23 THE COURT: Okay.

24 MR. QUINN: There is no ad in which Doctor Forrest
25 consented to be used, of his name or likeness.

1 THE COURT: Okay. So it's not as if we're trying
2 to distinguish false ads from genuine ads?

3 MR. QUINN: Correct. I wouldn't rule out the
4 possibility that there might be a scam ad about something
5 other than these crypto products --

6 THE COURT: I see.

7 MR. QUINN: -- or that ran outside Australia. So
8 I do want to be clear.

9 THE COURT: Okay.

10 MR. QUINN: We -- we're not trying to boil the
11 ocean. If we got even a few ads every month over the
12 relevant period, we could narrow this to Australia. What we
13 want, though, is to avoid a misleading collection of ads
14 that's over- and under-inclusive.

15 THE COURT: Okay. And do all the scam ads at
16 issue in the case include both Doctor Forrest's name and his
17 likeness, or are there some that only include his name and
18 not his likeness, some that only include his likeness and
19 not his name?

20 MR. QUINN: Again, the latter, I think a number of
21 variations, based on what we've seen. So there may be ones
22 that --

23 THE COURT: The latter. There were like three
24 options, so which one?

25 MR. QUINN: My apologies.

1 THE COURT: Pick which one. You tell me.

2 MR. QUINN: There are some that have an image.

3 There are some that have his name. There are some that
4 reference him without specifically using his name. There
5 are some with misspellings. There's all sorts of variation,
6 and what we've seen is just a sample from a few months that
7 prior counsel was able to kind of capture and flag and take
8 notes on in real time. So --

9 THE COURT: What I'm really focusing on is, are
10 there any ads that are image only?

11 MR. QUINN: We believe that there are, yes.

12 THE COURT: Okay. And in terms of what you're
13 interested in, in discovery, you're interested only in ads
14 that were shown in Australia or to users who were located
15 physically in Australia? How are you defining the
16 geographic boundary?

17 MR. QUINN: We have communicated to Meta that our
18 focus is on the ads that were shown to users in Australia,
19 and that would be a perfectly acceptable limitation for
20 discovery purposes, from our perspective.

21 THE COURT: Okay. And, now, another part of what
22 the Plaintiff is seeking is discovery of how the tools for
23 ad creation work, if I'm not mistaken?

24 MR. QUINN: That's right. I think this is in some
25 ways the heart of the matter, in light of the issue, as your

1 Honor rightly framed it, and the question here is just --
2 you know, the advertiser sits down with a digital form in
3 front of them. There's sort of an interface, and they begin
4 a process of creating an ad, and there's just all sorts of
5 things that Meta's software begins doing as advertisers put
6 inputs into that system.

7 As they type text, our understanding is there are
8 suggested completions to that text. There are spellchecks
9 being run. There are screens for child sex abuse material,
10 for terrorist content. There are machine learning systems
11 running in real time as all this is happening. We're being
12 told that there are limits to the extent to which those
13 inputs are being preserved in real time, before the draft is
14 saved up.

15 So the heart of this matter really is, from the moment
16 the advertiser begins that process, what is Meta doing and
17 contributing to that process, be it related to text, the
18 resizing and repixelation of images, the format of a
19 finished ad to make it more effective, more appealing to a
20 viewer? That is the heart of the matter, so we've been --

21 THE COURT: And let me just ask, do you have a
22 concern or suspicion that somehow Meta is taking some
23 advertiser's, some third party's, content input in the first
24 stage, and making it look more like Doctor Forrest, or
25 manipulating the image in such a way that it is doing the

1 things that make the content illegal?

2 MR. QUINN: Yes, I think that is a question we
3 want to explore. Our understanding is that, the moment an
4 image is uploaded to Meta's systems, there are a few things
5 that begin to happen automatically to deal with file size,
6 to deal with --

7 THE COURT: Yes, but all of those things are like,
8 "Whatever," right? Those are the content-neutral kinds of
9 things. But are there -- what I'm trying to get at is, what
10 is -- what -- because the discovery will -- I'm trying to
11 figure out the boundary of appropriate discovery here.

12 But the thing that the Plaintiff really needs to show,
13 and Meta needs to not -- to show is not the case, in order
14 to succeed on their defense on this 230 -- Section 230
15 issue -- is that Meta is doing something to the content that
16 makes it more likely to be using the name or likeness of
17 Doctor Forrest.

18 And so, if the input were something -- you know,
19 "Here's a generic image of a man," and somehow Meta's tools
20 were manipulating that image to make it look more like
21 Doctor Forrest, for example, just hypothetically, that would
22 be something that would be very important for the Plaintiff
23 to discover, but things that -- I mean, not that you can't
24 know this, and maybe Meta has a very strong interest in
25 sharing with you all of the extremely content-neutral things

1 it does do, in its own defense, making an image clearer,
2 making an image have better contrast, you know, whatever it
3 is.

4 Are you -- would -- is your theory of the case that
5 that is actually something that is actionable or makes --
6 takes it out of the realm of 230 immunity, and so you need
7 discovery of those kinds of details?

8 MR. QUINN: I guess I have two responses to that,
9 your Honor --

10 THE COURT: Yes.

11 MR. QUINN: -- one sort of legal and one more
12 factual. On the legal question, and looking at Judge Pitts'
13 order -- this is ECF 121, at eight -- he restates the
14 operative question in that instance as whether Meta has
15 active involvement in deciding what ads look like and who
16 they are shown to.

17 THE COURT: And then he goes on to elaborate the
18 content that is allegedly illegal. So making the blue
19 bluer, hard to know that that would be actually making the
20 content illegal, right?

21 MR. QUINN: Well, I think, if there is
22 misappropriating content, and Meta's systems are making it
23 more effective to more people, so that more people rely on
24 it, that is an argument we want to reserve the right to
25 press --

1 THE COURT: Okay. All right.

2 MR. QUINN: -- on summary judgment and appeal,
3 but, even beyond that, on the factual side, if an image has
4 to be recropped and resized for the mobile platform, let's
5 say, and so there's an image of a bunch of financiers, and
6 Meta's systems come in and zoom in on it so that it's much
7 more clearly an image of Andrew Forrest, that is a material
8 contribution that has exacerbated the misappropriation.

9 THE COURT: Okay.

10 MR. QUINN: Presumably their systems are built to
11 do this because it makes the ads more effectiveness, and
12 thus their advertising more valuable to the advertisers, so
13 they're benefitting. So, too, are the advertisers, and the
14 illegal nature of what's happening is getting worse, through
15 their system's contribution, and not because some what they
16 would call a "tool" is being toggled on or off, but just
17 because of what their systems do.

18 If Meta is making that material contribution, whether
19 it's doing it by way of a tool or a system or a feature
20 really should make more difference. The question is whether
21 Meta is making that contribution, and manipulating images,
22 here at the outset of discovery, is something we think we
23 should be permitted to explore, and then text is a part of
24 this, too. So there are, as we understand it -- again,
25 we're the outsiders here, but, you know, screens running to

1 detect words indicative of C-SAM or terrorist content, et
2 cetera.

3 I don't know that it's hard to imagine that those
4 systems, over time, as Andrew Forrest began complaining
5 about these ads, and his ads started to come down -- maybe
6 those screens learned that if you use the name "Forrest,"
7 that ad is much more likely to come down, and so, as the
8 advertiser is typing it in, they're suggesting different
9 words, or that -- we simply don't know, but we know that
10 there are screens running, and that advertiser inputs can be
11 changed before the advertisement is saved as a draft.

12 And so, given the discovery standards and the stage, we
13 think we should get pretty robust disclosure of those
14 systems.

15 THE COURT: So, focusing on the ads again, putting
16 the tools to the side for a moment, do you agree with Meta
17 that it's essential to identify the ads -- in the first
18 instance, they referred to something called an "ad ID" that
19 then allows them to find other information in their systems
20 about that particular ad. So do the parties agree that
21 it's -- you know, a goal is to identify all the scam ads so
22 that then the further discovery of individual ads can be
23 undertaken?

24 MR. QUINN: Again, I've got two responses. I
25 think I do agree it's important to identify a workable

1 universe of ads, and we need the right approach to do that,
2 and then there will be a derivative or a secondary question
3 of "Okay. What did the tools, systems, software, you know,
4 do between the inputs for those ads and the finished ones
5 that ran?"

6 THE COURT: Yes.

7 MR. QUINN: We do have some requests -- and this
8 gets a little into the interrogatory issue -- to just
9 understand more generally, what are the tools and systems,
10 how they work, give us the basics on that, but, as to how
11 they affected particular ads, I agree. That's downstream of
12 first identifying the ads.

13 THE COURT: Okay. So, if we focus on how to
14 identify the scam ads in the first place, what I understand
15 Meta to be saying is "We essentially relied on text. So
16 we've done OCR-ing of images. We've done video to text,
17 like, transcription, essentially," so basically focusing on
18 text, because -- and I'll explore this with Meta -- it's my
19 understanding that finding images without text is super
20 hard, right? There's just no way to do it in the vast, you
21 know, like, number of images on the platform, to, like, find
22 an image of Doctor Forrest, right?

23 So, okay. You seem not to accept -- or, rather, the
24 Plaintiff seems not to accept that representation, and
25 criticized the reliance on text, and I'd like to understand.

1 Presumably you have an expert. I see, in the outline of
2 things that will happen in this case, experts. So what
3 technique do you propose, if not the technique that relies
4 on text?

5 MR. QUINN: So I keep having two responses to your
6 Honor's questions --

7 THE COURT: It's okay.

8 MR. QUINN: -- but two responses there, too. So
9 the first is -- actually takes us back to October of 2019,
10 when Doctor Forrest had, you know, forcefully raised
11 complaints about these ads with Meta, and there was an
12 exchange of lawyer letters, and Meta's lawyers at White and
13 Case sent a letter to Doctor Forrest's counsel, and we've
14 got copies -- it's referenced in the third amended
15 complaint -- in which they say repeatedly -- and I'll quote
16 from it:

17 "The Facebook entities share your
18 client's frustration, and we have
19 allocated significant resources towards
20 tackling this issue. We are improving
21 the technological tools to combat this
22 problem, including launching new machine
23 learning tools to detect these ads at
24 scale. These efforts involve both
25 detection at scale specifically looking

1 for this type of ad."

2 It goes on --

3 THE COURT: "This type of ad" meaning Doctor
4 Forrest scam ads in particular, or scam ads generally?

5 MR. QUINN: This was specifically about Doctor
6 Forrest scam ads that he was insisting be taken down. They
7 go on to say that their efforts:

8 "May include use of key words, images,
9 and other signals in both targeted
10 searches and automated detection
11 models."

12 So that's five years ago they put in writing, through
13 counsel, "We are using machine learning, key words,
14 automated detection, and images to find Forrest scam ads."
15 The same letter talks about how to serve the right entities.
16 There is no question litigation is coming at this point. So
17 one of our first questions has been "Well, why don't we
18 start by producing everything you found, and presumably
19 preserved, about that effort?" We've had no meaningful
20 response to that point.

21 THE COURT: You mean the blocking of scam ads, ads
22 that never made it onto the platform?

23 MR. QUINN: Well, they -- these letters say that
24 they're also searching historically, "We're finding the ads
25 that are out there."

1 THE COURT: I see. Okay.

2 MR. QUINN: So all of that should have been
3 preserved, and all of those tools, which they're
4 representing, then, they're going to use to find Forrest
5 scam ads, should presumably be available and even better
6 now, five years later.

7 THE COURT: Okay.

8 MR. QUINN: So that's --

9 THE COURT: But you don't -- so you're relying on
10 the statements in the letter, but not -- you don't have a
11 particular technique, such as your expert might have
12 suggested, about how to go about -- and I'm principally
13 focusing on what I think is the hard problem of image only,
14 and I wonder if you actually have any examples of image-only
15 ads.

16 You say they exist, where it's image only, not texts
17 that refer to a name or a misspelling or something like
18 that, or any kind of key word that would be sort of unique
19 to Doctor Forrest, in the sense that you could rely on that
20 key word to find it. So do you have examples of image-only
21 scam ads?

22 MR. QUINN: Not at my fingertips.

23 THE COURT: But you've seen it?

24 MR. QUINN: I'd have to kind of huddle with our
25 team.

1 THE COURT: Okay.

2 MR. QUINN: My understanding is that --

3 THE COURT: It seems very odd that it could be an
4 effective scam ad without Doctor Forrest's name, unless he's
5 so recognizable to an Australian audience that all you need
6 is his face. Maybe that's the case.

7 MR. QUINN: Having spent a few days in Sydney for
8 client meetings, there is some sense of real celebrity
9 around him, and nicknames and all of that, but I -- to the
10 question about the expert search, I short of share -- you
11 know, I always hesitate to come into court and say, you
12 know, what, exactly, is it we're asking for, and to not
13 really concretely know the answer, and we simply don't. We
14 just have this letter from five years ago that says they
15 have these tools.

16 THE COURT: Have you asked your expert?

17 MR. QUINN: Well, we've got some consulting
18 experts, but nobody that knows Facebook's, you know,
19 proprietary systems or anything.

20 THE COURT: Okay. Well, I mean, Facebook, yes,
21 has proprietary stuff, but there's, you know, technology in
22 the world, right, that we hear about. I don't know if
23 Facebook has any of it, but let's assume that it has access
24 to whatever fancy stuff might be out there. I would expect
25 the Plaintiff to say, "Look. This is the kind of thing that

1 you should use. It's not going to cost a million dollars,
2 or a billion dollars, or whatever, to try an AI to do this.
3 This is what you should do."

4 MR. QUINN: Yes. I think --

5 THE COURT: Conversely, Meta might say, "Yes,
6 that's nice, but that would cost a huge amount of money for
7 us to train an AI system to identify this particular human
8 from amongst the vast quantity of images that we have. It's
9 not like cat videos. It's harder." And so I can't resolve
10 this in a vacuum, right? So that's why I was asking. Does
11 the expert have a technique that he or she has proposed, or
12 that you have shared with Meta, for how to find these
13 things?

14 MR. QUINN: Yes. The language that we've used
15 consistently is "image search," "facial recognition," "near
16 match and vector searching." We've asked Meta, "Can you
17 help us on -- you said you have these tools. Help us
18 understand them." And the answer consistently, in always
19 the same language, is "They were not designed for that
20 purpose."

21 THE COURT: Okay. Well, I'll explore that a
22 little bit further with Meta.

23 So, right now, if I understand it, in terms of the
24 number of scam ads identified, we have a total of 14, plus
25 some additional number that the Plaintiff have themselves

1 identified?

2 MR. QUINN: So the history here is that Doctor
3 Forrest's counsel earlier in the case was making efforts in
4 real time, over the course of several months, to identify
5 scam ads and keep track of them. Sometimes they see an ad,
6 and it is removed from Ads Manager. Sometimes it's gone
7 when they go back the next day.

8 So there's this very imperfect sort of work product
9 around tracking those ads, a lot of which was done in real
10 time. We've been going through that. We did, helpfully,
11 reach an agreement with Meta that they wouldn't argue waiver
12 around the work product issues there, so we could just sort
13 of give them what we have as it's organized.

14 THE COURT: Okay.

15 MR. QUINN: Those efforts led to an allegation in
16 the third amended complaint that there were, just during
17 that period of a few months, 1,154 scam ads, and, again,
18 that's just a period of a few months. We don't have 1,154,
19 you know, screenshots and copies. We've got notes and lists
20 and ad IDs. So we're rolling those things to them as we are
21 able to do that, but, ultimately, it could be thousands of
22 ads, which is partly why --

23 THE COURT: Okay. But for discovery -- and
24 probably -- maybe this is not a good statement, but I
25 suspect that, for dealing with the Section 230 issue, you

1 don't need, literally, every single ad -- you may need that
2 for other aspects of the case -- but that you would just
3 need, at a minimum, some sort of representative sample,
4 sufficiently representative that you could make claims about
5 what was done, what Meta's contribution was, was it material
6 or not? Then the parties would have enough of a data set to
7 make those arguments. Is that fair?

8 MR. QUINN: I think that's certainly fair.

9 THE COURT: Okay.

10 MR. QUINN: The challenge -- not the challenge.
11 The focus from our side is to ensure genuine
12 representativeness over time --

13 THE COURT: Yes. Sure.

14 MR. QUINN: -- because Facebook's ad contributing
15 tools get better over time, but also their own screens on
16 those tools make it better over time. The scammers and the
17 systems may learn to avoid the buzzwords over time.

18 THE COURT: Okay.

19 MR. QUINN: So, as long as it's genuinely
20 representative, we're -- the last thing we want is to sort
21 of boil the ocean and have hundreds of thousands of
22 documents dumped on us, either.

23 THE COURT: Okay. So where are we? So there
24 might be thousands of ads that actually happened, but, in
25 terms of representative sample over time? So, so far, I've

1 only heard that there are 14 ads that have been identified
2 by Meta. So what do we have -- what -- how many, and over
3 what relevant domain do we have scam ads for which there are
4 ad IDs that would allow further discovery? What does that
5 look like, whether for Meta or from the Plaintiff, or both?

6 MS. DEARBORN: I can answer that question, your
7 Honor, unless, Mr. Quinn, do you want to?

8 THE COURT: Okay. If that's all right.

9 MR. QUINN: From Meta's perspective, sure.

10 MS. DEARBORN: Sure. So, your Honor, I want to
11 start with what we have done. So we have applied broad
12 search terms across the creative text. That is --

13 THE COURT: Okay. I just -- I'm sorry. I just
14 want to know the number, and then I'll come back to Meta,
15 because I have a lot of questions.

16 MS. DEARBORN: I apologize, your Honor. I should
17 have answered directly.

18 THE COURT: So do we -- what is it? Is it 14? Is
19 it --

20 MS. DEARBORN: It's 230,000.

21 THE COURT: Okay. Two hundred and thirty thousand
22 scam ads?

23 MS. DEARBORN: Alleged scam ads, yes.

24 THE COURT: Okay.

25 MS. DEARBORN: Two hundred and thirty ads (sic)

1 that we have identified through our search. We have
2 reviewed over half a million ads, your Honor, that hit on
3 our search terms, and the work is done. We had 100
4 reviewers. We have now identified 230 ads.

5 Now, I want to be clear. A lot of those ads contain
6 very duplicative text, we believe, so we don't think that
7 that's a true number, but, nonetheless, that is the number
8 that we have found.

9 THE COURT: Okay. And these are 230 ads with the
10 ad ID information?

11 MS. DEARBORN: Two hundred thirty thousand. Thank
12 you. Two hundred and thirty thousand. We've got Section
13 230, and 230,000 in this case.

14 THE COURT: Okay. Now, is it 230 ads or 230 --

15 MS. DEARBORN: Two hundred and thirty thousand,
16 your Honor.

17 THE COURT: -- thousand ads? Okay. That's what I
18 thought I heard the first time, and that's a lot of ads.
19 Okay. And -- but are these -- is what you have found, you
20 know, the data that you have -- does it allow you then to
21 investigate each individual ad? Not that I'm suggesting
22 that you must do that, but that -- you have the data that
23 you would need?

24 MS. DEARBORN: Yes, your Honor.

25 THE COURT: And what period of time does the

1 230,000 span? Does it span the entire -- I think the
2 parties agree on the relevant time period. It's like 2019
3 to present?

4 MS. DEARBORN: Correct, your Honor.

5 THE COURT: Okay. So what -- do these 230,000 ads
6 span that whole period of time?

7 MS. DEARBORN: Yes, your Honor.

8 THE COURT: Okay. All right. So, good. That's
9 good news. And it seems to me like that's a -- that's
10 progress. So, when I asked --

11 MR. QUINN: I agree. That's the first --

12 THE COURT: When I asked about, you know, what's
13 the status of the dispute, it sounds like there's been some
14 tremendous progress. So maybe I should go talk to Meta
15 next -- is that fair? -- and see what they have to say about
16 some of these other items of concern.

17 MR. QUINN: Of course.

18 THE COURT: Okay.

19 MR. QUINN: We welcome that, your Honor.

20 THE COURT: Okay. Great. All right.

21 So let's hear more about the 230,000 ads, and what Meta
22 believes it can or cannot provide by way of further
23 discovery about those ads.

24 MS. DEARBORN: Sure. So, your Honor, again,
25 it's -- I've been reminded that it's approximately

1 230,000 --

2 THE COURT: Fine.

3 MS. DEARBORN: -- but no, we have identified,
4 again, millions of ads run on Meta's ad services every day.
5 So, in order to conduct a reasonable inquiry, a reasonable
6 discovery search in this case, we have to first find a
7 repository within Meta that contains a historical set of
8 those ads. We found it, happily, and in -- let me take one
9 step back.

10 We also have to make sure that that repository is, A,
11 queryable, and, B, when we query it, it returns a valid ad
12 ID, because then we have to go to separate repositories in
13 order to use that ID to gather all of the additional
14 information about those ads that Plaintiffs have asked for.
15 So, happily, we found those repositories. There are two
16 tables within a central data warehouse that Meta has.

17 Those -- that repository was searchable to text terms.
18 So we crafted a set of 41 very broad text search terms. We
19 shared those search terms with the Plaintiff. They never
20 seriously engaged with us on whether or not those search
21 terms were sufficient, although they raised a few questions.

22 We have agreed to add some search terms based on those
23 questions, according to our ESI protocol. Instead, the
24 position that the Plaintiffs are taking in this case is that
25 no text-based search could ever be sufficient to satisfy

1 Meta's obligation under Rule 26, and we think that is a
2 position that is both untethered to law and also wrong as a
3 matter of fact.

4 I want to be very clear with the Court on a few points.
5 First, we have not found in our reasonable search any
6 better-suited repository for locating alleged scam ads than
7 the ones that we are searching now. We have also not
8 identified any better-suited technology for searching for
9 historical ads featuring Doctor Forrest's name or likeness
10 than the text searches we are using now.

11 THE COURT: Okay. Can I ask you about that one?

12 MS. DEARBORN: Yes.

13 THE COURT: Okay. So let's assume that your
14 search terms are broad and, you know, over-inclusive. So,
15 if you got 500,000 hits, approximately, and you reviewed all
16 of them, and you ended up with 230,000 genuine scam ads, I
17 guess, legitimate -- I don't know -- responsive scam ads --
18 okay. So that was a big effort, and you've done that, and
19 you've got that. Okay.

20 So the question is, is text sufficient if there are ads
21 that were image only? Which I find, again, a little bit
22 hard to believe that someone would go to the effort of doing
23 a fake ad using Doctor Forrest's likeness and not his name,
24 because -- well, who knows? But, to the extent there are
25 ads like that -- and maybe I should just ask, have you

1 happened to find any in your own searching, any
2 likeness-only ads?

3 MS. DEARBORN: We have found ads that feature
4 Doctor Forrest's likeness in a video, but our searches are
5 capturing that, and here's why.

6 THE COURT: The video to text?

7 MS. DEARBORN: Yes, exactly, your Honor.

8 THE COURT: So it will have his name, or it will
9 have words that are searchable?

10 MS. DEARBORN: Yes, your Honor, precisely. So our
11 text searches are not searching -- so, when a published --
12 so, when an advertiser decides to publish an ad on Ads
13 Manager, they supply what is called the "creative," which is
14 an image and the text accompanying the ad. That's all
15 supplied by the advertiser, as I think your Honor correctly
16 noted before. The -- it can be an image or a video.

17 Our text searches are searching not only the text that
18 is supplied by the advertiser, but also any OCR text from a
19 still image. So, for example, if Doctor Forrest is standing
20 on a stage in an image, and it says, "Minderoo Foundation,"
21 our search -- I would need to double-check our search terms,
22 but we searched for those kinds of things. So that text to
23 image would have been captured, and then, in addition,
24 we've -- we are also searching a transcription of the video
25 that is supplied with the ad, as well.

1 THE COURT: Right.

2 MS. DEARBORN: So --

3 THE COURT: I'm imagining a situation where there
4 is none of those things. There's no words that appear on
5 the screen that could be OCR-ed and then text-searched.
6 There's no video -- there's no audio associated with video
7 that could be transcribed and then text-searched. It's just
8 an image. Okay? So have you come across any ads like that?

9 MS. DEARBORN: So I'm hesitant to make a
10 categorical representation --

11 THE COURT: Yes. Okay.

12 MS. DEARBORN: -- because I personally have not
13 laid eyes on all of these ads, your Honor.

14 THE COURT: Yes.

15 MS. DEARBORN: So I am not -- I can't -- I don't
16 think I can make a representation on that, one way or the
17 other, but I think your Honor's concern is one that we have
18 investigated, which is, is there a better way to look for
19 ads allegedly featuring Doctor Forrest's name or likeness?

20 And when I say, "Text," the searches that we have come
21 up with, because of how our databases are configured, as
22 well as the methodologies that we've figured out how to
23 query them, that -- what we've got is the best we have. We
24 have investigated other potential ways to identify ads
25 featuring Doctor Forrest's name or likeness, and we have

1 come up short.

2 So, just to identify one technology that, in the sort
3 of string citations of "techie" words that we keep hearing
4 from the other side, they have asked that we look into
5 facial recognition technology. We cannot use facial
6 recognition technology for these purposes, and that's for
7 three reasons.

8 First, our facial recognition program, which I'm -- I
9 actually have the block post that the Plaintiffs have cited.
10 I'm happy to hand it up to the Court, if the Court is
11 interested in it. The way that program works is that it
12 creates -- or we have a list of all consenting participants
13 in that program -- and, by the way, Doctor Forrest, to our
14 knowledge, has not elected to participate in that program,
15 nor has he created a verified page that would allow us to
16 have him participate in that program. They've never told us
17 that that's not true.

18 But, nonetheless, we have all of the participants in
19 this program, and then our facial recognition technology, as
20 part of our enforcement against ads that violate Meta's
21 terms and policies, right? We would apply that facial
22 recognition in order to figure out whether or not there is a
23 match to anyone in that entire population. So it doesn't
24 give us, you know, "Yes, this ad features Doctor Forrest.
25 Take it down." Instead, it says, "This ad, you know, up or

1 down, it matches on one of a host of individuals who have
2 consented to participate in this program."

3 THE COURT: And so it's not individual-specific or
4 image-specific?

5 MS. DEARBORN: Correct.

6 THE COURT: Could it -- okay. I see.

7 MS. DEARBORN: So that's number one, and, your
8 Honor, this October 2019 letter which has come up multiple
9 times, and which actually predated the complaint by, I
10 believe, two years, we actually said this precise thing to
11 Doctor Forrest at that time. We said, "We can't look for
12 individual" -- "That's not the way this technology works."

13 The second reason, your Honor, is that, again, the
14 databases that we need to query in order to identify the
15 various components of the ads, including inputs and outputs,
16 those are only searchable by ad ID. We cannot search those
17 using any other technology, text searches, you know, image
18 searches, whatever. That's not how those databases are set
19 up. So it's not a -- it's not -- we can't query it that
20 way.

21 And the third, your Honor, is that facial
22 recognition -- and we said this in our letter -- facial
23 recognition technology implicates privacy concerns and data
24 misuse concerns.

25 THE COURT: Yes.

1 MS. DEARBORN: And so we can't -- okay.

2 THE COURT: Yes. No, I understand that, that
3 part. So I'm actually interested in the question of whether
4 there are any existing Meta tools, features, that might be
5 used as a proxy for finding things that might have gotten
6 missed by text, and I'm tending to think there's, like,
7 very, very few such things, but let's just hypothetically
8 say there's a tranche of image only.

9 MS. DEARBORN: Yes.

10 THE COURT: Seems like image tagging, or maybe,
11 once you've identified the 230,000 scam IDs, there's some
12 way that you can use that data set to identify similar, and
13 what I'm -- what I have in mind is not "Let's train an AI
14 just on Doctor Forrest," which would be, I think,
15 prohibitively expensive, and not something that the
16 Plaintiff is asking about, but whether existing systems
17 would allow for that. So I used the example -- I don't use
18 Facebook. I have no -- I have plenty of cases involving
19 Meta, but -- so I know what I know just because -- not from
20 actual use.

21 But, if there is an ability to identify and tag cat
22 videos, is there a similar -- is that feature available to
23 use what you know about Doctor Forrest to identify and tag
24 Doctor Forrest things? That's a question. Does this apply
25 to other existing techniques, whether or not they're in this

1 particular database or not, but are there existing
2 techniques that could be deployed to, without undue burden,
3 find these things?

4 MS. DEARBORN: Yes. Not that we have found in a
5 reasonable search, your Honor.

6 THE COURT: Okay.

7 MS. DEARBORN: We have -- you know, we are trying
8 to identify the best way to find historical ads that are
9 stored in our databases, and we have not identified any
10 better way.

11 THE COURT: Yes. Okay. You keep saying, "Based
12 on a reasonable search." What I have in mind in cases like
13 this is actually talking to a human who knows, right? So
14 talking to a human is sort of my go-to thing for
15 complicated -- that's why I asked the Plaintiff, you know,
16 "Have you talked to your expert?" Like, what do your expert
17 human engineers know about this problem, and is there a way
18 that they would suggest that you could use an existing tool
19 or feature to identify things that might have gotten missed?

20 MS. DEARBORN: Yes. I can assure your Honor that
21 we have talked to many humans in the course of this case,
22 including subject matter experts on our facial recognition
23 technology, subject matter experts on other potential
24 methodologies. Again, we have not -- you know, we have not
25 identified any better way to search our historical ads

1 population.

2 And I keep coming back to this, your Honor, because I
3 think that this is an important distinction that the
4 Plaintiff has not appreciated. There is a difference
5 between us querying historical databases that store ads that
6 have run on Meta's services -- that's Instagram and Facebook
7 and the like -- and preventing or blocking ads that are --
8 have not yet run on the services, but are potentially
9 violative of our policies. Those are two totally different
10 questions.

11 THE COURT: And they're different questions
12 because of the technique deployed, and I'm just -- I'm
13 speculating here, but I can imagine that there would be a
14 difference, in even an expert system, understanding what
15 constitutes fake versus not fake. There would be things
16 about how the image is put together, or the text applied, or
17 whatever, that would be not content-specific, *per se*, like
18 as in "This is an individual person," but that would just be
19 a signifier of "Fake ad," and if that's what you're --
20 because I didn't understand the reference in your papers,
21 and I think that the Plaintiff maybe didn't, either.

22 Just saying it's not designed for discovery doesn't
23 really tell me anything. But is that what you're trying to
24 communicate, that it's a different type of technology that
25 actually can't be deployed for this purpose?

1 MS. DEARBORN: Yes, your Honor. That's precisely
2 it, and that is exactly what this October 19th letter is all
3 about. It's about forward-looking enforcement efforts to
4 prevent alleged scam ads or, frankly, any ad that violates
5 our terms. We brought up terrorism and C-SAM and these
6 other things.

7 THE COURT: Yes.

8 MS. DEARBORN: Those have nothing to do with this
9 case, but, nonetheless, we do attempt to enforce our
10 policies, to ensure that the ads that are -- to the best of
11 our ability -- that are running on our systems are not
12 violating them.

13 And so our ad review system -- which I actually believe
14 that our ad review system is outside of the focus of phase
15 one of this case -- I think that the efforts that we make to
16 prevent alleged scam ads are not part of phase one. It
17 doesn't have to do with Section 230. But, nonetheless, our
18 ad review system relies on automated technology to review
19 the millions of ads that run across Meta's platforms.

20 They -- we apply hundreds, hundreds, of signals to
21 detect violations of ad policies, exactly as your Honor
22 identified. Those signals don't necessarily have to do with
23 the content of the ad. We potentially also do the -- you
24 know, if the originator of that particular ad had violated
25 our policies before -- other signals are taken into account

1 to determine whether or not this ad may violate one of any
2 number of Meta's policies or not. That is a different
3 question from "Okay. How do we find ads featuring this
4 specific individual within Meta's historical repository
5 where it stores that?," just totally different questions.

6 THE COURT: Okay. So I appreciate that. I
7 actually think that the fact that you have identified
8 230,000 or so is great. I mean, it's great because it
9 allows the parties to move forward.

10 If you have valid ad IDs for those, you know, a
11 significant percentage of those, what -- you refer to in
12 your papers, on behalf of Meta, "related metadata." So what
13 is the data that you can identify and produce to the
14 Plaintiffs, having identified the ad ID, that will allow
15 them to answer the question of "How did it go from input to
16 output, and what did Meta contribute"?

17 MS. DEARBORN: Yes. Your Honor, I actually have a
18 list of those data -- of those data points, if your Honor
19 would be interested.

20 THE COURT: Have you shared that with the
21 Plaintiff?

22 MS. DEARBORN: Yes.

23 THE COURT: Okay.

24 MS. DEARBORN: This is -- I'm happy to share with
25 them a copy. This is a list that we've shared in letters.

1 It's just compiled.

2 THE COURT: I mean, I'm happy to look at it,
3 although I may not know what it means, but I would like to
4 understand, like, is this complete? So you can hand it out.

5 MS. DEARBORN: May I approach?

6 THE COURT: Sure. Sure, sure. Thanks. Okay.

7 MS. DEARBORN: Your Honor, just -- if I can
8 briefly address the number for a minute, the notion that the
9 Plaintiffs would amenable to a representative sample is
10 actually -- that's the first we've heard of it. We offered
11 a representative sampling approach in January.

12 THE COURT: But maybe a representative sample of
13 14 was not particularly attractive. So now that --

14 MS. DEARBORN: That was not what we were --

15 THE COURT: Yes. No. I think, moving forward,
16 this is what we should do. We should figure out if there
17 can be a representative sample, unless you would like
18 230,000, you know, pieces of data from a database, which is
19 perhaps not -- and that's a bad sign -- well, not a bad
20 sign. Maybe that's a good sign.

21 But we may be interrupted soon, so I'm trying to get to
22 the bottom of at least this one before we have to take a
23 pause, here. But this is -- this set of data points is what
24 Meta would propose to share with the Plaintiff?

25 MS. DEARBORN: This is -- to be clear, these are

1 the data points that we have agreed to find and produce, if
2 they -- we can -- if we are able to do so after a reasonable
3 search. So this is the --

4 THE COURT: Okay. What does that mean, "do so
5 after a reasonable search"? What does that mean?

6 MS. DEARBORN: So we are still investigating the
7 feasibility of just the -- literal technical feasible of
8 gathering some of these data points, and so I don't want to
9 over-promise, but this is -- so long as we can find these
10 through a reasonable search, and we will be communicating,
11 hopefully, with the Plaintiffs on this point -- these --
12 this is the list of data points that we have agreed to
13 provide.

14 And I think, your Honor, this begins to touch on the
15 second part of this dispute, which is the -- what tools are
16 in scope for phase one. With your Honor's indulgence, can
17 I --

18 THE COURT: Well, before we get to that, can I
19 just ask about the geographic limitation? Does the 230,000
20 include, like, everything, everywhere, or is it specific to
21 an Australian audience?

22 MS. DEARBORN: It sure does, your Honor, because
23 it includes everyone, everywhere, because the Plaintiffs had
24 never told us before today that they were only interested in
25 ads that ran in Australia.

1 THE COURT: But could you narrow it as was
2 described by Mr. Quinn? Like, you could do it by geography?

3 MS. DEARBORN: I'm looking at Ms. Rivera, because
4 she's our technical expert sitting at this table. She's the
5 person. We can try, is the answer that I have.

6 THE COURT: Okay. Because that might be the first
7 step. Narrow it by geography, figure out a representative
8 sample that spans the correct years, and then figure out
9 what -- which of these categories are available and
10 meaningful to your effort, and I -- what you're really -- I
11 think you all agree that you're focusing on what happens
12 between the input from the third party and the output to the
13 user who sees the ad.

14 That's what you're trying to figure out, what happens,
15 and the data points that will allow you to know that is what
16 you're trying to achieve here, and I think that the tools
17 issue, which tools, comes up when we get to the
18 interrogatory answers, as well. So maybe, if you -- with
19 your indulgence, I would like to take a break now, deal with
20 my jury -- yes? -- and then -- sorry to make you all wait.
21 Feel free to go grab a coffee or whatever, and then you can
22 come back, and we'll deal with the interrogatory issue.

23 But I think this is great progress, and I'm encouraged
24 by it, and I continue -- hope you continue to discuss it.
25 Okay?

1 So we'll revisit this. What do you think, 30 minutes?
2 I don't know. So about 30 minutes, if you wouldn't mind.
3 Okay. Thank you very much.

4 MS. DEARBORN: Thank you, your Honor.

5 MR. QUINN: Of course. Thank you, your Honor.

6 (Pause while the Court heard other matters.)

7 THE CLERK: Remain seated and come to order.

8 Court is back in session.

9 THE COURT: All right. Thank you very much for
10 your patience.

11 Okay. So I think where we left off is I had suggested
12 we talk about the interrogatories as a vehicle for
13 addressing the question about, you know, the tools, and what
14 the scope of that kind of production out to be. So, if
15 that's okay, I'll just proceed to that issue.

16 MR. QUINN: If I may, your Honor?

17 THE COURT: Yes.

18 MR. QUINN: The parties have had a productive
19 discussion during the break, which I'm happy to just update
20 the Court on, very tentatively, but if it's somehow --

21 THE COURT: Sure. Okay. If you think that would
22 be helpful, sure.

23 MR. QUINN: So what we've proposed, and what we've
24 started discussing -- and everyone would need to firm this
25 up and speak to clients, but just to keep the Court fully

1 apprised -- would be that, as a process forward on this scam
2 ad search issue, perhaps we could get some access to basic
3 information about the 230,000 ads that have been identified,
4 so not that we need copies of each one, but, if there's a
5 chart of their dates or that sort of thing, that we could
6 then identify for them what we believe to be an appropriate
7 narrowed sample as to which we would request the backup
8 information, and that we would just, you know, work through
9 that process collaboratively.

10 And I think we could kind of reserve the question until
11 we've had that initial look at things, of whether there may
12 be some kind of image-only, no spoken or written or imaged
13 text of any kinds, ads that we would need a different
14 solution for, but, in view of this, you know, new
15 information that there are 230,000, and that they span the
16 date range, perhaps we could reserve the image-only
17 question, start there, and, with some basic information,
18 work to identify a narrowed and representative sample.

19 THE COURT: Okay. So, if that's -- I'm assuming
20 that both parties would like to spend time doing, which
21 makes sense to me -- what I think might be useful is for me
22 to give you a date to report back, and so how long would you
23 suggest? And this would be, let's say, on Docket 186, the
24 dispute about the document production relating to scam ads,
25 and the information like metadata and other information

1 about those ads, and the process.

2 How long do you need to report back?

3 MR. QUINN: Throwing it out there, 14 days, we
4 could get the status report?

5 MS. DEARBORN: That sounds reasonable to us, your
6 Honor, and we obviously need to investigate the feasibility
7 of all of this, but I'm happy to report back to the Court in
8 14 days.

9 THE COURT: Okay. So I'll just set a -- I'll do a
10 short order that sets that as a deadline, and you could use
11 it as a date by which you would submit a stipulation about
12 what you plan to do, or simply a status report. What I
13 don't want is, like, "Let's re-brief our discovery letter
14 again." I have in mind something a little bit more concise.
15 And if we need further proceedings, we can attend to it
16 then. I'll invite you to tell me.

17 Okay. So that would be for what's principally at issue
18 in Docket 186, and then, if we move to Docket 187, which is
19 about the interrogatories, maybe I should just ask if there
20 are any updates on this dispute.

21 Let me ask what the -- for the Plaintiffs. Have there
22 been any amendments or other updates?

23 MR. QUINN: Once again, two brief points, your
24 Honor. First, on the proposal we've just outlined on the
25 path forward, I think, as to Docket 186, it would still

1 leave two issues open.

2 One is the question of the October 2019 correspondence,
3 and what was done, and what exists or was preserved around
4 those efforts, and the other is this question of what
5 metadata, ultimately, we will get about the ads identified,
6 and there's a very significant dispute remaining there.

7 THE COURT: Well, that's this --

8 MR. QUINN: I agree that it relates to the
9 interrogatory, as well.

10 THE COURT: I mean, that's this data points
11 document. So have the parties not conferred, or is there a
12 crystalized dispute about the data points document?

13 MR. QUINN: Yes, your Honor, and I think it
14 relates principally to the last bullet, or the last primary
15 bullet, on page one, where the information that's being
16 given -- this is about "What did Meta software actually
17 do?" -- is limited unilaterally to lowercase T, "tools,"
18 which they have refused to define for us.

19 THE COURT: Wait, wait. On the -- you're talking
20 about this (indicating)?

21 MR. QUINN: Correct, your Honor, the last sort of
22 primary bullet before the indentations begin.

23 THE COURT: I see. I see.

24 MR. QUINN: So, as to the question of what Meta
25 software of any kind interacted with inputs or produced

1 outputs, they've only agreed to give us information about
2 lowercase T, "tools," all of which are public-branded things
3 that get described by the marketing team to advertisers, and
4 that advertisers can turn on and off, and that Meta has
5 decided, unilaterally, are relevant to the 230 issue, where
6 the parties do have some legal disputes.

7 THE COURT: Okay.

8 MR. QUINN: So we think all the software.

9 THE COURT: So I think this dovetails with the
10 stuff that's asked about in the interrogatory, so I'd like
11 to use it as a vehicle, because, you know, my basic theme
12 about discovery, not just in this case but generally, is,
13 you know, ask for what you need, not, literally, the kitchen
14 sink, right?

15 So we need -- you need to ask for what you need, and
16 that's what I'm trying to figure, is what do you -- what do
17 you actually need? So -- okay. So have there been any
18 updates on the interrogatories?

19 MR. BROWN: And let me address this, your Honor.
20 Walter Brown. So we just discussed with counsel in the
21 hallway that we are prepared to amend and supplement our
22 responses to interrogatories two, three, and five, next
23 week, the 25th. We had offered to do that --

24 THE COURT: And that's what you put in your
25 letter.

1 MR. BROWN: And -- but we're going to do it. We
2 didn't reach an agreement to do that a couple weeks ago, but
3 we're going to do it anyway, and it's going to be narrative
4 responses.

5 THE COURT: Okay.

6 MR. BROWN: So we will likely, as well, identify
7 Bates numbers of documents, but we will provide narrative
8 responses to two, three, and five, which get at this very
9 issue, I think, that we've just been talking about, about
10 the tools.

11 Separately, with respect to interrogatory number eight,
12 we will supplement in short order. I can't promise you that
13 we're going to have it by next week, but it will be not long
14 on the heels of that.

15 THE COURT: Okay.

16 MR. BROWN: So that's the update with respect to
17 those. I think interrogatories one, four, and six, we
18 think, are sort of classic interrogatories, where a 33(d)
19 response is appropriate, but, with respect to the others,
20 we're going to go ahead and give narrative responses.

21 THE COURT: Okay. You know, given the hour, I'm
22 going to just start by sharing with you my impressions from
23 reading the papers, and then we'll discuss from there,
24 because -- and my goal here is to problem-solve, so that we
25 get to a resolution, so that's why I'm doing it this way.

1 So I went through all of the interrogatories that are
2 in dispute -- that's one through nine -- and I looked at
3 them, and I looked at the responses that were provided by
4 Meta, and I'm just going to make an observation that some of
5 these interrogatories do seem like they are likely to be
6 best answered by documents, and others don't.

7 And for the ones that seem to be answerable by
8 documents, likely by documents, it is not consistent with
9 Rule 33(d) to just say, "I'm going to answer by documents,"
10 and not actually identify documents, and I just will make
11 the observation that the answers to the interrogatories were
12 due on December 23rd. That was almost three months ago, and
13 if the parties didn't stipulate to an extension of that
14 deadline, then, you know, the answers are late. They just
15 are.

16 And so just saying you will make a 33(d) response is
17 not really consistent with the rules, but, moving on from
18 that, if I look at interrogatory number one, this
19 principally refers to the process by which three things
20 happen, content modification, optimization, and placement.
21 I worry that optimization and placement are a little broader
22 than what Judge Pitts had in mind.

23 I'm not even sure I know what optimization has to do
24 with the material contribution issue to content, or what
25 placement has to do with the material contribution issue as

1 framed in the order, although I believe this probably goes
2 back to your comments earlier, Mr. Quinn, about, well, you
3 think that might actually be the kind of thing that would
4 not -- that would destroy immunity, or would prevent
5 immunity from attaching, is if it were a placement, for
6 example, that increased the likelihood someone will click on
7 it. I have my doubts, but I'm not your presiding judge.

8 So maybe some discovery about that is warranted at this
9 stage, so the parties can tee that up for Judge Pitts, but
10 content -- let's say content modification -- that's a
11 defined term -- that seems to be fairly within the scope of
12 what everyone, I think, would agree is discoverable, and
13 just taking interrogatory number one as an example, I think
14 there's a problem with how Meta has responded to
15 interrogatories like this. So there's a statement that
16 says:

17 "Subject to and without waiving any of
18 the foregoing, et cetera, et cetera,
19 objections, Meta will conduct a
20 reasonable search proportional to the
21 needs of this case, and produce any
22 non-privileged documents sufficient to
23 ascertain the answer to this
24 interrogatory."

25 So, essentially, Meta is treating this interrogatory

1 number one as a document request, and I don't think that
2 that's an appropriate way to treat a document request like
3 this, because the answer to interrogatory number one does
4 not depend on Meta's -- the outcome of Meta's reasonable
5 search for privileged/non-privileged documents.

6 If the answer to the request is not in a document, I
7 think Meta would still have an obligation to answer.

8 Likewise, if the answer to interrogatory number one is in a
9 privileged document, nevertheless, you don't have to produce
10 that document, but you would have to supply the facts that
11 are contained in that privileged document. So it doesn't
12 really fairly meet an interrogatory like this, that says,
13 "Describe the step-by-step process," to answer in this way.

14 I could totally see an answer that says, "We actually
15 have a document that describes the step-by-step process.
16 Here. Look at this flowchart, this diagram, this narrative
17 description, and some kind of engineering specification,
18 that fully answers it," but you're not relieved of the
19 obligation to fully answer this interrogatory, at least as
20 to content modification, leaving aside optimization and
21 placement, simply because your reasonable search doesn't
22 turn up a document that answers it. That's just -- so I
23 just wanted to alert you to that concern I have about the
24 mode of answering, and that is not just interrogatory number
25 one. It's a number of the -- a number of other ones.

1 So, you know, my sense on interrogatory number one is,
2 you can't use 33(d) exclusively unless you have a document
3 that completely answers this interrogatory, and the same
4 would be true for, for example, interrogatory number two,
5 "List and describe every product or service or tool provider
6 used by Meta that can affect in any way the content or
7 display of an advertisement." I mean, the "or display" is
8 too broad, perhaps, but you may not have a document that
9 lists all such things, right? So you may just need to say,
10 "These are all the tools that we have that an advertiser --
11 that, if we have an ad creative that's submitted to our
12 system, these are the things that will -- that can be used
13 to manipulate it."

14 Now, if you can say definitively, "No ad involving
15 Doctor Forrest that was a scam used any tools other than
16 these," okay, but I don't think you're in a position to say
17 that right now. So you may have to just list, or give a
18 document that lists, completely, all of the tools that will
19 modify, can be used to modify, are used by Meta to modify,
20 the content, again leaving aside display for the moment.

21 So, again, this one, interrogatory number two, seems
22 not amenable to 33(d), and I would say the same for number
23 three and number five.

24 MR. BROWN: Your Honor, those are the
25 interrogatories that I indicated we're planning on providing

1 narrative about.

2 THE COURT: A narrative, yes. So I'm just kind
3 of -- this is like my overview. Number seven would be the
4 same, and number and number nine. The two that I thought
5 are, like, definitely, probably, for sure, 33(d), because
6 they seem to be looking for org charts, would be number four
7 and number six. It sounds like the Plaintiff is looking for
8 an org chart.

9 Now, I'm not sure if it's, you know, contemporaneous
10 org chart, and org chart over the last relevant time period.
11 I don't know. But, to the extent that the Plaintiff is
12 looking for "Whose deposition do I take?," an org chart may
13 be entirely appropriate, or you could identify the people,
14 but -- so that was my sense, is that you -- it's not
15 appropriate to treat an interrogatory as a de facto document
16 request, unless it really is something that is fully
17 described in a document. That was just my sense.

18 Now, I think some of these are too broad, right? I'm
19 not entirely sure what they encompass, from their
20 description, and even their deposition. There may be some
21 room for discussion and debate amongst us here about that
22 issue, but that was just my sense, and so maybe that's
23 consistent with the -- you know, the proposed amendments
24 that Meta says that it wishes to make, but I'm not sure that
25 that goes far enough, just two, three, and five, and

1 possibly eight, but I think maybe one, as well.

2 MR. BROWN: Yes. So I think our intention was to
3 respond to one with documents, identifying them as such,
4 that we believe would contain the response, but -- and to
5 the extent those documents would not be adequate and
6 sufficient, we would provide a narrative response.

7 THE COURT: Yes. I think that's also --

8 MR. BROWN: So I think our belief is that they
9 will, on one.

10 THE COURT: Yes. Okay. I think that's an
11 appropriate approach, a combination of narrative and
12 something more detailed in a document. That could be
13 totally fine, but you will need to actually provide a
14 narrative if the documents don't completely answer.

15 So, if that -- and that's just my sense of it, and I
16 would like to understand more from the Plaintiff about the
17 optimization and placement, because those do seem to
18 encompass a scope of technologies, tools, systems that are
19 really much farther afield from Section 230 than what I
20 understood. So could you elaborate on the optimization and
21 placement aspect of, let's just say, interrogatory number
22 one?

23 MR. QUINN: Yes, your Honor. So I think there's a
24 phrase the parties have used in some of our discussions
25 about this, and the phrase is "feedback loop," and part of

1 what's driving that thinking on our end in some of this is
2 pursuant to conversations with, you know, consulting experts
3 and the like, is that, you know, the ads aren't on a
4 conveyor belt, where they get created, finalized, published,
5 and never changed again.

6 These things get refined constantly in real time.
7 They're sent out in AB testing to small pockets of users.
8 How those users engage with them is tracked. That, in turn,
9 can affect the shape of that same ad, which is then run
10 to --

11 THE COURT: The "shape." The content?

12 MR. QUINN: Yes, the content, the appearance, the
13 particular text or colors that are used, and that is what
14 the placement and optimization terms are about. We have
15 narrowed, in the meet-and-confer process, both
16 interrogatories seven and eight to seek this information
17 only insofar as the results of the ad review or the
18 performance evaluation are violation to the systems that are
19 engaging with the inputs of new ads that are being created.
20 It's all sort of --

21 THE COURT: And is there agreement on that? Are
22 you representing there's agreement on the scope of
23 interrogatories seven and eight at this point?

24 MR. QUINN: I think -- I don't want to speak for
25 Meta. I think they've accepted that narrowing, although at

1 times expressed some confusion about the term "feedback
2 loop." So I don't know that we are fully in agreement on
3 that. It's something we offered, to try to narrow seven and
4 eight and tie it to --

5 THE COURT: Okay. Because that caught my
6 attention, as well. Maybe that is a good place.

7 So ad review and performance evaluation, I'm not sure
8 what those are, but I made a note that says the threshold
9 question is whether either of these, review or performance
10 evaluation, result in some change, modification, in the
11 content of the ad, and that seems to -- before you get,
12 like, vast discovery about all of these processes, I think
13 it would be appropriate to get discovery on that threshold
14 question as to each of them, and whatever -- you know,
15 whether it's an interrogatory answer in narrative form, by
16 document, or something else, getting that question answered
17 first, before you get step-by-step process of all this
18 stuff, which may be totally irrelevant to this question, at
19 least at this stage -- I think you're calling it "phase
20 one" -- it's not a good use of your time.

21 So have you reached agreement, then, on seven and
22 eight, as to that issue?

23 MR. QUINN: My understanding is that the feedback
24 loop narrowing was more our proposal than the parties'
25 agreement, and the only nuance I might make to what your

1 Honor just expressed is, our view is that the information
2 would be relevant if the data resulting from the performance
3 evaluation or the ad review can affect the content of that
4 ad that was evaluated or reviewed, or the next one that's in
5 the process of being created.

6 THE COURT: The next one about Doctor Forrest?

7 MR. QUINN: Correct.

8 THE COURT: Okay.

9 MR. QUINN: That if every ad that uses a
10 particular image of him, as coming down, results in a flag
11 or a screen or a change to that image the next time, then
12 that is the feedback loop we're asking for.

13 THE COURT: Okay. So let's just focus on seven
14 and eight for now, and I don't know, Mr. Brown, if you're
15 going to be the one who's addressing this, these issues, but
16 what about just answering that -- what I'm calling the
17 "threshold relevance" question?

18 MR. BROWN: Yes. We can answer that question, I
19 think, your Honor, in a narrative form.

20 THE COURT: Okay.

21 MR. BROWN: The -- we've agreed, actually, to get
22 back to them on eight, and look into this further.

23 THE COURT: And what about seven?

24 MR. BROWN: Seven, we've stood on our objection
25 that it's just not relevant to --

1 THE COURT: But could you say why? Like, could
2 you say -- because right now you --

3 MR. BROWN: Yes, yes, because it doesn't alter the
4 content. But we can put that into an interrogatory
5 response, if that's what the Court thinks would be
6 appropriate.

7 THE COURT: Well, what I'm wondering is, if --
8 and, again, I'm not sure if you have a 33(d) kind of -- so
9 what I think would be helpful, and would forestall further
10 discovery, at least further ordering of discovery on my
11 part, is if there were some definitive statement that
12 there's nothing about the ad review process that actually
13 affects -- it's either before the ad gets in, or -- and it
14 doesn't affect any current ad -- it's either yes or no, the
15 ad gets in or doesn't get in -- and it doesn't affect any
16 subsequent ad in terms of the content of the ad.

17 That's the -- what I'm calling the "threshold
18 statement," and if there was just like a "because" after
19 your statement of "It's not relevant," "It's not relevant
20 because," that might be sufficient, because then I'd really
21 be turning to the Plaintiff and saying, you know, "They
22 described what this is. It's publicly -- is there a public
23 description of it as well? What's your basis for thinking
24 that it's otherwise?," you know, before we get expansive
25 discovery into this system or performance evaluations.

1 They're not really modifying content. So I would encourage
2 the parties to proceed in that fashion, so that we can kind
3 of narrow the focus.

4 MR. BROWN: I understand, and I think we can give
5 the "because."

6 THE COURT: Okay. While we're on scope, I also
7 thought interrogatory number nine -- well, I didn't entirely
8 understand it:

9 "List and describe every Meta Advantage
10 feature, tool, product, or service that
11 was used in connection with any of the
12 scam ads."

13 So that, to me, seems too broad, by virtue of the "used
14 in connection with," because there could be lots of things
15 used in connection with a scam ad that have nothing to do
16 with this sort of content manipulation, enhancement,
17 modification, et cetera, or even placement.

18 I mean, it just seems too broad, and there must --
19 maybe this interrogatory nine, what you really want is
20 encompassed by other requests, and you don't actually need
21 this, anyway, because, if you get the answers to one and two
22 and three and five, et cetera, that will be sufficient.
23 But, if there was something I'm missing about the scope of
24 nine, I'm happy to hear from you on it.

25 MR. QUINN: I would agree with the Court that

1 there may be some overlap in practice. We're trying to come
2 at the same issue from two different angles, in part because
3 the parties, I think, have different proffered standards or
4 legal understandings of what it might meant to affect
5 content, and some of this was on display at the 1282
6 hearing, right?

7 This was actually the ground on which Meta was seeking
8 an interlocutory appeal that actually -- the legal question
9 there was an unsettled one, and so we're trying to make sure
10 we've got discovery on the broadest version of that. The
11 parties haven't always agreed to approach discovery that
12 way.

13 So the earlier interrogatories are trying to ask, in
14 general, "Tell us what the tools are that can affect content
15 that engage with inputs," but then there is a catchall,
16 because we understand how Meta thinks pretty narrowly about
17 those questions, to say, "Well, just give us everything
18 that -- all the software that dealt with these scams, that
19 interacted with the inputs or that affected the outputs."

20 THE COURT: Yes. Yes. I think that's too broad.
21 So I would encourage the -- I don't think it's appropriate
22 for Meta to just say, "Our view of what counts as not
23 materially contributing" -- or, you know, "Our view about
24 that material contribution versus not material contribution
25 should guide discovery," because there is a dispute.

1 So I think it has to be sufficiently broad to encompass
2 both parties' views, without becoming, like, ridiculously
3 irrelevantly over-broad. That's the inartful way of saying
4 don't ask for what you don't actually need, because it's
5 just not going to be plausible to say, "I'm going to put the
6 ad in this corner of the screen, versus that corner of the
7 screen," and that's content. I just -- well, maybe I'm
8 wrong. Maybe I'm wrong. Maybe that is content. I
9 shouldn't say.

10 MR. QUINN: Well, I think, to be clear -- I don't
11 know that our position reaches quite that far, but, as I
12 understand Meta's position, it has been that unless Meta
13 selected the words, Meta suggested using Doctor Forrest's
14 name, or Meta introduced the photo of him, then it's not
15 materially contributing, as a matter of law, whereas our
16 view is no, if you zoom in on a picture, if you highlight it
17 more, if you select from among different pieces of text, if
18 you punch it up in a way that enhances the message the
19 advertiser created with reference to Forrest, all of those
20 would be material contributions, and we've just never
21 really --

22 THE COURT: And there's a distinction between
23 providing a tool that a user can use to do all those things
24 and Meta doing it itself, and the parties need to have
25 enough of a basis to explore that issue in front of Judge

1 Pitts.

2 MS. DEARBORN: May I respond, your Honor?

3 THE COURT: Yes. Yes, please.

4 MS. DEARBORN: I just want to be clear. I do not
5 believe that there is actually a discovery dispute before
6 the Court that would reach this distinction.

7 THE COURT: Okay.

8 MS. DEARBORN: It is true, as Mr. Quinn indicated,
9 that we do not believe that any of our tools materially
10 contribute to the allegedly unlawful content of these ads.
11 It is also true, I believe, that we have a legal dispute
12 over the scope of Section 230, but that is not how we
13 have -- that is not what is guiding our responses to these
14 discovery requests.

15 And, as you'll see from our answers to each of these
16 discovery requests, we have agreed to provide documents
17 sufficient to show the operation of relevant portions of Ads
18 Manager, and how those tools may affect the content of
19 advertisers on Meta's services, which I believe is precisely
20 the formulation that you are identifying.

21 THE COURT: Well, but there's the rub, is that you
22 limit -- let's just look at interrogatory number one, the
23 response to that, "Operation of relevant portions of Ads
24 Manager." Does that encompass content modification,
25 optimization, and placement, as described in interrogatory

1 number one, using those defined terms?

2 MS. DEARBORN: And I --

3 THE COURT: It seemed to me it didn't. It was
4 narrower.

5 MS. DEARBORN: Okay. And I think I can address
6 the Court's concern on this. Meta has not identified any
7 tool, public or not, that may not -- may even theoretically
8 affect the allegedly unlawful content of ads, meaning the
9 image and use of Doctor Forrest's name and likeness, that is
10 not included in the set of tools that are within --
11 contained within Ads Manager. This is -- I mean, I -- we
12 are not artificially -- I am not attempting to play word
13 games with the Court or with Plaintiffs.

14 THE COURT: Yes.

15 MS. DEARBORN: We are not artificially limiting
16 discovery to tools that are already publicly available.
17 That is not where we started the inquiry. We believe that
18 the only tools that even might theoretically affect the
19 content of ads are contained within Ads Manager, which
20 should not be a surprise to the Court. These are the tools
21 that we provide advertisers that would allow them to publish
22 ads on our systems. Because they are supplying the
23 creative, of course those are the tools that are relevant.

24 We also think that this is absolutely what Judge Pitts
25 identified as the key focus of phase one in his motion to

1 dismiss order. That order is all about Ads Manager, and the
2 allegations in the complaint are all about Ads Manager.
3 We -- yes.

4 THE COURT: Yes. The allegations in the complaint
5 are about Ads Manager, but what I think might be a slight
6 bit of daylight between Meta's position and Plaintiff's is
7 that Plaintiffs know what they know, and don't know what
8 they don't know.

9 So what I think is a fair description of what the
10 discovery ought to encompass is from input to output, and
11 it's not limited to just "What can the third party do with
12 certain tools?" It's input to output. And if there's some
13 automatic process or some conditional process that Meta
14 applies, "If this, then this, we do this," or if a
15 particular setting -- there are lots of "ifs."

16 So, if Meta is doing anything, whether it's a tool the
17 third party can use or not between input and output, that's
18 the scope of discovery, and if there's something that
19 happens after output in this performance evaluation context
20 that then feeds back into that same category of ads, scam
21 ads or ads from this person, you know, that would be
22 encompassed as well.

23 So that's where I -- when I looked at your response, I
24 was like, "I'm not sure there is alignment." You know, I
25 think it might be -- it may not be narrow, but it didn't

1 sound as broad as I thought it ought to.

2 MS. DEARBORN: I understand, and I think that the
3 delta here is that, again, we have not identified any tool.
4 We just don't believe secret tools exist, right? There's --

5 THE COURT: Okay. But there's tools, and there's
6 just processes that are not tools, and I think -- you know,
7 I don't want to create a disagreement where there is none.
8 There may not be any disagreement. But we shouldn't get
9 hung up on the word "tools."

10 If tools was the only thing that was alleged in the
11 complaint, because that's the only thing that's visible to
12 the Plaintiff, okay, fine, but I think, if you -- if it --
13 this all circles back to Judge Pitts, and he finds out that,
14 in addition to tools that third parties can use, Meta runs a
15 whole bunch of automatic processes for any ads, or ads of
16 certain types, or whatever, "An ad that contains an image of
17 a man will be modified in this way," like, something like
18 that, maybe unbeknownst to the third party, that's exactly
19 what I think Judge Pitts would like to know.

20 And so you should not exclude that, and you should not
21 get hung up on terminology, either. That doesn't mean that
22 Plaintiffs get discovery on the entire platform, and all
23 systems and features. That's not appropriate. It's between
24 point A and point B, the input and the output. That's what
25 I think you need to focus on.

1 And so, again, there may be a document that completely
2 describes that. There may be a human or humans you need to
3 consult in order to provide a narrative response, maybe
4 supplemented by documents, but, whatever you need to do, I
5 think that's what is fairly required by interrogatory number
6 one, I suggest to you. That's how I would decide this, this
7 issue.

8 Now, the question about what to do. I like the fact
9 that you all are -- continue to work through these issues,
10 and may actually reach agreement. Would it be appropriate
11 to ask you to report back to the Court, also, on
12 interrogatories number one through nine in 14 days, with
13 that other status report on Docket 186?

14 MR. BROWN: Yes. We can certainly do that with
15 respect to a status report.

16 THE COURT: Yes. And, you know, given that you've
17 stipulated to it, it may not be granted, but let's assume
18 that it's granted, you know, some extension of time for
19 discovery. That may be the most effective way to get what
20 you want, get what you need, and not be unduly burdened.

21 So why don't I include 187 in the status report
22 request, and I will invite you at that time to also suggest
23 whether further proceedings are needed or you have
24 additional guidance that you need from the Court, but,
25 hopefully, having shared with you my thoughts, that might

1 help move things along.

2 Is there anything else that you would like to address
3 with the Court today, from the Plaintiff?

4 MR. QUINN: No, your Honor. Very grateful for the
5 Court's guidance. Thank you.

6 THE COURT: Okay. Anything else from the
7 Defendant?

8 MS. DEARBORN: Nothing from us, your Honor, and we
9 also thank the Court for its time.

10 THE COURT: Okay. Well, and thank you very much
11 for staying longer. I appreciate it. Okay.

12 MR. BROWN: Thank you.

13 THE COURT: This matter is concluded.

14 THE CLERK: Court is concluded.

15 (Proceedings concluded at 12:42 p.m.)

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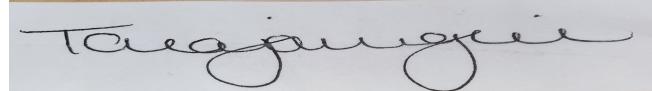
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1 CERTIFICATE OF TRANSCRIBER
23 I certify that the foregoing is a true and correct
4 transcript, to the best of my ability, of the above pages of
5 the official electronic sound recording provided to me by
6 the U.S. District Court, Northern District of California, of
7 the proceedings taken on the date and time previously stated
8 in the above matter.9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties to the action
11 in which this hearing was taken; and, further, that I am not
12 financially nor otherwise interested in the outcome of the
13 action.14 
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